



U.S. Department of Justice

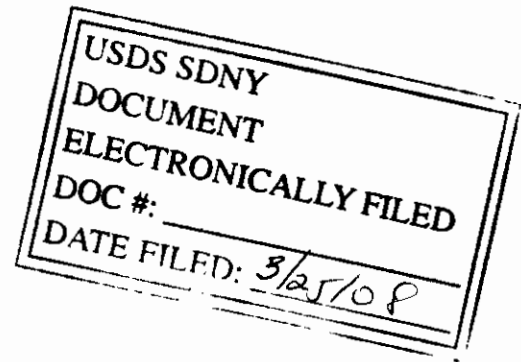
*United States Attorney
Southern District of New York*

86 Chambers Street 3rd Floor
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March 24, 2008

By Hand

Hon. Richard J. Sullivan
United States District Judge
United States District Courthouse
500 Pearl Street, Room 615
New York, New York 10007



Re: New York Times v. Dep't of Defense,
07 Civ. 7481 (RJS)

Dear Judge Sullivan:

Pursuant to the Court's order dated February 19, 2008, I write respectfully on behalf of both parties to update the Court on the status of the Government's response to the Freedom of Information Act ("FOIA") request of the New York Times ("plaintiff") for records related to the United States Department of Defense's ("DOD") communications with certain military analysts (the "FOIA request").

The Court previously ordered DOD to produce affidavits establishing the adequacy of DOD's search for records by February 11, 2008. After reviewing the affidavits produced by DOD, the New York Times raised numerous issues with DOD regarding the scope of the search. Although it is DOD's position that it made a "good faith effort to search for the records requested, and that its methods were 'reasonably expected to produce the information requested[.]'" Kidd v. DOJ, 362 F. Supp. 2d 291, 294 (D.D.C. 2005) (citation omitted), in the interest of resolving this matter without further litigation, DOD has agreed to conduct additional searches requested by the New York Times.

Specifically, DOD is conducting additional searches of all relevant email accounts, using as search terms the names of 116 military analysts (DOD had previously searched for the term "military analyst" but not the individual names of the analysts). The new search encompasses the relevant email accounts of employees of the Office of Joint Chiefs of Staff, the Office of the Executive Secretary, and the Office of the Assistant Secretary of Defense for Public Affairs ("Public Affairs"). In addition, Public Affairs is conducting a search of the relevant hard drives

of its employees. At the request of the New York Times, DOD is also in the process of searching the email accounts of a few employees whose responsibilities included procurement. DOD expects to complete its search of e-mails of the Office of the Joint Chiefs of Staff and to produce responsive documents, if any, by March 31, 2008. DOD will complete the remainder of searches described in this paragraph and produce responsive documents, if any, as soon as possible, but in any event, no later than April 14, 2008.¹

In addition to the additional searches of email accounts, DOD is searching United States Central Command, United States Southern Command and Public Affairs for photographs that may be responsive to the FOIA request. Finally, again at the suggestion of the New York Times, DOD is searching the "strategic effects division" of United States Central Command for any potentially responsive records. DOD expects to produce responsive photographs and documents, if any, by April 14, 2008.

Although DOD has agreed to conduct the searches described above, it is the position of the New York Times that additional searches may be warranted. Accordingly, the New York Times reserves its rights under FOIA to challenge both the adequacy of the search and the withholding of certain documents pursuant to claimed FOIA exemptions described in the draft Vaughn index provided to the New York Times on March 17, 2008. DOD also reserves its rights under FOIA.

The parties have consulted and are in agreement regarding the proposed schedule described above. I thank the Court for its consideration of this matter.

Request granted. The parties shall submit a joint status letter regarding the progress of the searches referenced herein no later than April 18, 2008.

Respectfully,

MICHAEL J. GARCIA
United States Attorney

By:

[Signature]
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SO ORDERED

Date: 3/25/08

[Signature]
RICHARD J. SULLIVAN
U.S.D.J.

cc: David E. McCraw (by facsimile 212-556-1009)

¹ Pursuant to its letter to the Court on March 14, 2008, the Government had indicated it would produce responsive emails from the Office of the Secretariat by March 31, 2008, or update the Court by March 24, 2008, if additional time was needed. The search has taken more time than originally anticipated, and will not be completed by March 31, 2008. Accordingly, the Government respectfully requests an extension of time until April 14, 2008 to produce those emails.